

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2008CF3598
)	EEOC NO.: 21BA82280
ROBERT COZZI)	ALS NO.: 09-0678
)	
Petitioner.)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners David Chang, Marylee Freeman, and Charles E. Box presiding, upon Robert Cozzi's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")¹ of Charge No. 2008CF3598; and the Commission having reviewed all pleadings filed in accordance with 56 Ill. Admin. Code, Ch. XI, Subpt. D, § 5300.400, and the Commission being fully advised upon the premises;

NOW, THEREFORE, it is hereby **ORDERED** that the Respondent's dismissal of the Petitioner's charge is **SUSTAINED** on the following ground:

LACK OF SUBSTANTIAL EVIDENCE

In support of which determination the Commission states the following findings of fact and reasons:

1. On June 17, 2008, the Petitioner filed a charge of discrimination with the Respondent. The Petitioner alleged that his former employer Power Great Lakes, Inc. ("Employer"), discharged him because of his race, White, in violation of Section 2-102(A) of the Illinois Human Rights Act (the "Act"). On October 21, 2009, the Respondent dismissed the Petitioner's charge for Lack of Substantial Evidence. On November 23, 2009, the Petitioner filed a timely Request.
2. The Petitioner worked for the Employer as an Assembler. On May 1, 2008, the Employer informed the Petitioner that it was going to start cross-training all of its employees on the Employer's assembly lines. The Petitioner was informed that he was scheduled to start cross-training on May 5, 2008, at which time the Petitioner would be required to switch assembly lines for a month.
3. The Petitioner objected to the reassignment and refused to comply with the Employer's directives.

¹ In a Request for Review Proceeding, the Illinois Department of Human Rights is the "Respondent." The party to the underlying charge requesting review of the Department's action shall be referred to as the "Petitioner."

4. On May 2, 2008, the Employer discharged the Petitioner for insubordination.
5. In his charge, the Petitioner alleged he was discharged because of his race. In his Request, the Petitioner makes various new contentions about alleged harassment by his co-workers, but offers no additional evidence that is relevant to his original charge.
6. In its response, the Respondent asks the Commission to sustain its dismissal of the Petitioner's charge for lack of substantial evidence because the evidence showed the Petitioner had voluntarily quit his employment and because the Petitioner was insubordinate.

CONCLUSION

The Commission concludes that the Respondent properly dismissed the Petitioner's charge for lack of substantial evidence. If no substantial evidence of discrimination exists after the Respondent's investigation of a charge, the charge must be dismissed. See 775 ILCS 5/7A-102(D). Substantial evidence exists when the evidence is such that a reasonable mind would find the evidence sufficient to support a conclusion. See In re Request for Review of John L. Schroeder, IHRC, Charge No. 1993CA2747 (March 7, 1995), 1995 WL 793258 (Ill.Hum.Rts.Com.).

The Commission finds no substantial evidence to support the Petitioner's claim that he was discharged because of his race. The Petitioner does not dispute that the Employer directed him to begin cross-training in May 2008, and that the Petitioner refused to comply with the Employer's directive. The Petitioner therefore does not deny his insubordination, but rather contends a non-White employee was not discharged for insubordination. The Petitioner identifies a non-White employee he contends was not discharged for insubordination.

One of the elements of proof of a *prima facie* case of discrimination requires a showing that a similarly situated individual, outside of the Petitioner's protected class, was treated more favorably under similar circumstances. See Marinelli v. Human Rights Commission, 262 Ill.App.3d 247, 634 N.E.2d 463 (2nd Dist. 1994). In order to be "similarly situated" this employee must have been ... "directly comparable to [the Petitioner] in all material respects". See Patterson v. Avery Dennison Corporation, 281 F3d 676, 680 (7th Cir. 2002).

In this case, the non-White employee identified by the Petitioner was not similarly situated to the Petitioner because that employee was never cited for insubordination. The Petitioner has not submitted any evidence which demonstrates that he was subjected to harsher discipline for insubordination than his non-White co-workers.

Accordingly, it is the Commission's decision that the Petitioner has not presented any evidence to show that the Respondent's dismissal of his charge was not in accordance with the Act. The Petitioner's Request is not persuasive.

THEREFORE, IT IS HEREBY ORDERED THAT:

The dismissal of Petitioner's charge is hereby **SUSTAINED**.

This is a final Order. A final Order may be appealed to the Appellate Court by filing a petition for review, naming the Illinois Human Rights Commission, the Illinois Department of Human Rights, and Power Great Lakes, Inc. as Respondents with the Clerk of the Appellate Court within 35 days after the date of service of this order.

STATE OF ILLINOIS

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Entered this 9th day of June 2010.

Commissioner David Chang

Commissioner Marylee V. Freeman

Commissioner Charles E. Box